

Message Text

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TO USMISSION IAEA VIENNA

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C O N F I D E N T I A L STATE 097820

E.O. 11652:GDS

TAGS: TGEN, TECH, IR

SUBJECT: NEGOTIATIONS ON DRAFT AGREEMENT ON ATOMIC ENERGY

REF: A) TEHRAN 3828; B) STATE 094541

FOR KRATZER AND SIEVERING

BEGIN SUMMARY: WE ARE PREPARED TO ACCOMMODATE SEVERAL OF
IRAN'S DRAFTING PROPOSALS IN AREAS OF FUEL SUPPLY AND ARE
VERY ENCOURAGED THAT GOI HAS TAKEN FAVORABLY TO CONCEPT
THAT IT SHOULD ORIENT ITS REPROCESSING PLANS ALONG MULTI-
NATIONAL LINES WITH ACTIVE SUPPLIER INVOLVEMENT. FOR THE
REASONS STATED BELOW, HOWEVER, WE STILL STRONGLY PREFER TO
SEE OUR FALL-BACK CONCERNING REPROCESSING HANDLED IN AN
EXCHANGE OF NOTES, SINCE WE SEE VALUE IN HAVING AN UNEQUIV-
OCAL RIGHT OF APPROVAL INCLUDED IN ALL OF OUR FUTURE
AGREEMENTS. MOREOVER, BEFORE AGREEING TO ANY CHANGE IN
ARTICLE VIII WE WOULD NEED TO SEE QUITE PRECISELY THE KIND
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OF LANGUAGE DELEGATION HAS IN MIND SO WE CAN GUAGE THE

TRADE-OFFS BETWEEN THAT PROPOSED TEXT AND THE NATURE OF THE ASSURANCE WE OTHERWISE MIGHT BE COMPELLED TO OFFER IN A NOTE SHOULD WE BE ABLE TO PERSUADE GOI TO GO LATTER ROUTE.
END SUMMARY

OUR DETAILED COMMENTS, ARTICLE BY ARTICLE AND KEYED TO REFTEL, ARE AS FOLLOWS:

PARA. 3A. NEW DEFINITION OF "TRANSFER" FOR ARTICLE I IS ACCEPTABLE.

PARA. 3B CHANGE IN ARTICLE III, SUBSTITUTING "SHALL" FOR "WILL" ALSO IS AGREEABLE. WE ARE PREPARED TO SEE OUR STANDARD LIST OF TOPICS CONCERNING THE EXCHANGE OF INFORMATION INCLUDED IN ARTICLE III. HOWEVER, WE WOULD BE RELUCTANT TO SEE PROPOSED LIST EXPANDED.

PARA. 3C. PARA. VII A MAKES TRANSFERS OF RESEARCH SNM SUBJECT TO CEILING, WHICH HAS NOT BEEN CURRENT PRACTICE. SUGGEST FOLLOWING VERSION ARTICLE VII. QUOTE: UNDER TERMS AND CONDITIONS AS MAY BE AGREED, URANIUM ENRICHED IN THE ISOTOPE U-235 MAY BE TRANSFERRED TO GOI OR PERSONS UNDER THE JURISDICTION OF GOI FOR USE AS FUEL WITHIN IRAN IN REACTORS FOR POWER APPLICATION; REACTORS FOR APPLICATION OTHER THAN POWER, INCLUDING REACTORS FOR RESEARCH, MATERIALS TESTING, EXPERIMENTAL, SCIENTIFIC AND INDUSTRIAL USES; AND IN REACTOR EXPERIMENTS. SUCH TRANSFERS OF SNM FOR USE IN POWER REACTORS SHALL BE SUBJECT TO ARTICLE IX, AND MAY BE EFFECTED BY THE ADMINISTRATION OR BY PERSONS UNDER THE JURISDICTION OF THE USG WITH WHOM GOI HAS ENTERED INTO AGREEMENTS WHICH ENTITLE THE GOI TO A PORTION OF THE SEPARATIVE WORK OUTPUT OF A URANIUM ENRICHMENT FACILITY TO BE CONSTRUCTED IN THE US. END QUOTE

PARA 3E. ARTICLE VIII E RE PHYSICAL SECURITY, DELEGATION AUTHORIZED FLOAT NEW PROPOSAL BUT REVISED SO THAT APPLICABLE PHRASE SHALL READ: "SUCH MEASURES WHICH, IN THE OPINION OF BOTH PARTIES PROVIDE ADEQUATE PROTECTION AGAINST UNAUTHORIZED USE, THEFT OR SABOTAGE". DELEGATION SHOULD UNDERSTAND THAT IN THE CONTEXT OF THE CURRENT REVIEW OF THE RIBICOFF BILL S. 1439 THE ADMINISTRATION MAY TAKE ISSUE WITH THE PROPRIETY OF INSISTING THAT US PHYSICAL SECURITY NORMS OR GENERAL DOMESTIC STANDARDS BECOME THE CONFIDENTIAL

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PRECONDITION FOR DOING NUCLEAR BUSINESS ABROAD. ACCORDINGLY, WHILE WE RECOGNIZE THE DISTINCTION DELEGATION HAS DRAWN BETWEEN COMPARABILITY WITH PROTECTION AFFORDED IN US AND COMPARABILITY WITH US STANDARDS, WE ARE RELUCTANT TO SEE ANY COMPARABILITY CONCEPT EXPRESSED IN THE AGREEMENT. RATHER WE WOULD HOPE USE OF THE WORD "ADEQUATE" COULD PROVE ACCEPTABLE TO GOI ON GROUNDS THAT IT PRESERVES A DESIRED DEGREE OF FLEXIBILITY, WHILE RECOGNIZING PARTIES

WILL NECESSARILY DRAW ON THEIR OWN EXPERIENCE IN DETERMINING WHAT IS SUFFICIENT.

PARA. 4A.ARTICLE IX ALSO IS ACCEPTABLE. HOWEVER, WHILE WE RECOGNIZE THAT GOI SHOULD BE ENTITLED TO RECEIVE FOR ITS OWN REACTOR USE ITS SHARE OF US ENRICHMENT FACILITY WE ALSO ARE CONCERNED ABOUT THE NEED TO PRESERVE IN THE AGREEMENTS A TOTAL CEILING FIGURE THAT CAN BE RELATED TO IRAN'S PROJECTED REACTOR PROGRAM. WE ANTICIPATE SERIOUS

CONGRESSIONAL DIFFICULTIES SHOULD NO SUCH FIGURE BE INCLUDED. CONSEQUENTLY, DELEGATION REQUESTED TO INCORPORATE CEILING OF 23,000 MW IN ITS TEXT, ADVISING OF GOI REACTIONS AND NOTING REMAINDER OF 4000 MW CAPACITY TO WHICH IRAN'S ENTITLED WOULD STILL BE AVAILABLE FOR DIRECT SALE TO THIRD COUNTRIES.

PARA. 5 RE ARTICLE IX WE ARE AGREEABLE TO SEPARATING LOW ENRICHED FUEL FABRICATING PLANTS FROM OTHER FACILITIES FOR CONTROL PURPOSES. OVERALL FUEL CEILING SHOULD NOT, REPEAT NOT, BE MADE APPLICABLE TO THIRD COUNTRY PROVISIO THAT DELEGATION IS DRAFTING.

ON THE QUESTION OF REPROCESSING, WE ARE ENCOURAGED THAT GOI HAS RESPONDED IN RELATIVELY FORTHCOMING MANNER TO CONCEPT THAT IT SHOULD ORIENT ITS REPROCESSING PLANS ALONG MULTINATIONAL LINES WITH ACTIVE SUPPLIER INVOLVEMENT. YOU SHOULD DISABUSE GOI THAT WE ARE SEEKING CONTROL OVER IRAN'S COMPLETE FUEL CYCLE. OUR CONCERNS RELATE TO NEED TO ESTABLISH DESIRABLE PRECEDENT GOVERNING FACILITIES HANDLING US FURNISHED MATERIALS OR PLUTONIUM DERIVED THEREFROM. BASED ON PARAS. 6 AND 7 OF REFTTEL, WE SEE TWO ISSUES BEARING ON RESOLUTION OF REPROCESSING APPROVAL QUESTION: (A) DEGREE TO WHICH US WOULD EXPRESS READINESS TO APPROVE REPROCESSING IF MULTINATIONAL CONDITIONS ARE CONFIDENTIAL

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MET; AND (B) WHETHER SUCH READINESS AND RELATED CONDITIONS SHOULD BE INCORPORATED IN THE AGREEMENT RATHER THAN REMAIN IN THE NOTE.

FYI: ON THE FIRST ISSUE, WE NOTED ETEMAD'S DESIRE TO GAIN US APPROVAL "AT THE OUTSET" AND DELEGATION'S RESPONSE THAT "ACTUAL ACHIEVEMENT" OF SUPPLIER INVOLVEMENT WOULD BE NECESSARY. WE AGREE WITH THIS LINE.

ON THE SECOND POINT, WE APPRECIATE GOI'S CONCERNS, BUT WE DO NOT, REPEAT NOT, WISH TO SEE TEXT OF ARTICLE VIII REVISED AT THIS STAGE TO INCORPORATE MATERIAL NOW CONTAINED IN THE NOTE. FOR REASONS OF PRECEDENT IN OTHER MORE DIFFICULT CASES, WE REMAIN STRONGLY COMMITTED TO CONCEPT THAT IRAN'S EXPRESSION OF WILLINGNESS TO CONSTRUCT A

MULTINATIONAL PLANT AND OUR DISPOSITION TO APPROVE, SHOULD BE HANDLED IN AN EXCHANGE OF NOTES. WE WOULD CONSIDER REVIEWING THIS POSITION PRIOR TO THE SHAH'S VISIT IN WASHINGTON IF ONLY REPEAT ONLY IMPASSE IS QUESTION OF HOW WE TREAT OUR MUTUAL AGREEMENT PROVISION WITH ITS EXPRESSION OF READINESS TO APPROVE SUBJECT TO CONDITIONS. HOWEVER, WE BELIEVE IMPASSE MIGHT BE AVOIDED IF DELEGATION COULD IMPRESS IRAN THAT WE BASICALLY ARE PROPOSING TO TREAT HER MORE PREFERENTIALLY THAN WE MIGHT BE WILLING OR ABLE TO

DO FOR OTHER COUNTRIES. WE BELIEVE THIS DUAL OBJECTIVE CAN BEST BE ACHIEVED BY FRAMING SUITABLE EXCHANGE OF NOTES BETWEEN THE PARTIES. CONVERSELY, WE PERCEIVE THAT THIS OBJECTIVE COULD BE DEFEATED IF IRAN COMPELLS US TO INCLUDE FORMULATION IN AGREEMENT. . END FYI

INSTRUCTIONS ON REPROCESSING MATTER AS FOLLOWS:

(A) FIRMLY ADHERE TO PRESENT POSITION REGARDING SEPARATION OF CONTENT OF ARTICLE VIII AND NOTE, SEEKING TO EXPLAIN IN VERY POSITIVE TERMS OUR DESIRE TO BE RESPONSIVE TO IRAN'S NEEDS WHILE MAINTAINING PRECEDENT VALUE OF OUR PRESERVING FLEXIBILITY FOR OTHER NATIONS WHO MIGHT DESERVE LESS

FORTHCOMING IMPLEMENTATION OF PROPOSED ARTICLE VIII. ALSO STRESS LEGAL EQUIVALENCE OF NOTE LANGUAGE FOR IRAN.
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(B) TO DEMONSTRATE OUR INTEREST IN RESPONDING TO GOI'S SUBSTANTIVE CONCERN OVER US "VETO RIGHTS", SURFACE US FALL-BACK POSITION (REFTEL B) WE ARE PREPARED TO EXPLORE DIFFERENT WAYS THIS MIGHT BE POSITIVELY FORMULATED IN EXCHANGE OF NOTES. FOR EXAMPLE, GOI MIGHT GIVE US NOTE STATING ITS FIRM INTENT TO PROCEED WITH MULTINATIONAL PLANT TO WHICH WE COULD REPLY APPROPRIATELY. CONVEY TO ETEMAD THAT US INTENT IS TO ASSURE THAT IF THE GOI DEVELOPS A CONCRETE AND FIRM PROGRAM FOR MULTINATIONAL FACILITY WITH FULL AND ACTIVE SUPPLIER INVOLVEMENT, A US APPROVAL OF SAFEGUARDABLE FACILITY WOULD BE FORTHCOMING.

WE WILL APPRECIATE IMMEDIATE REPORT ON NEXT ROUND OF DISCUSSIONS INCLUDING DELEGATIONS ASSESSMENT OF POSSIBLE TRADE-OFFS BETWEEN WHAT IRANIAN'S MIGHT INSIST BE INCLUDED IN THE NOTES AS CONTRASTED TO TEXT OF AGREEMENT ITSELF.

AS NOTED EARLIER, WE DO NOT, REPEAT, NOT, WISH CONVERSATIONS TO BREAK OFF IN SPIRIT OF IMPASSE. CONSEQUENTLY, SHOULD REPROCESSING POINT REMAIN UNRESOLVED YOU SHOULD REFLECT

EARLIER INSTRUCTION IN REFTL THAT EACH SIDE MIGHT BENEFIT
FROM SHORT RECESS TO PERMIT FURTHER REFLECTION. KISSINGER

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